IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10811 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KISHOR P BHATT

Versus

HIGH COURT OF GUJARAT

Appearance:

1. Special Civil Application No. 10811 of 2001

TANNA ASSOCIATES for Petitioner No. 1

MR PARESH UPADHYAY for Respondent No. 1-2

MR KETAN A DAVE for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 02/09/2002

ORAL JUDGEMENT

Rule. Mr Paresh Upadhyay, learned counsel waives service of Rule for respondent Nos. 1 and 2. Mr Ketan A Dave, learned counsel waives service of Rule for respondent No. 3.

2. What is under challenge in this petition under Article 226 of the Constitution is the decision of the Registrar of this Court in selecting respondent No. 3 for the post of Clerk of the Court (Registrar) from Bhavnagar District in preference to the petitioner who is presently the senior most Head Clerk on the establishment of the Bhavnagar District Court.

3. In view of the order that this Court proposes to pass, it is not necessary to set out all the facts in detail or to refer to the respective pleadings of the parties. However, in view of the controversy between the parties, this Court had called upon Mr Paresh Upadhyay to produce the original file for perusal and upon perusal of the said file, it transpires that while considering the case of the petitioner, respondent No. 3 and two other candidates, the Registrar of this Court proceeded on the footing that in a departmental inquiry held against the petitioner in the past, the punishment of withholding five increments was imposed with effect from 1.1.1998 and that at present i.e. October, 2001 also, the punishment is in force.

4. In this petition, the petitioner has pointed out that the petitioner was visited with the penalty of withholding five increments with effect from 1.1.1988 and that, therefore, the petitioner earned his next increment on 1.1.1993 and, therefore, the penalty had ceased to operate long back and that the petitioner was even promoted as Head Clerk on 16.8.1994. The petitioner has further contended in his rejoinder affidavit that the petitioner has passed the lower standard and higher standard departmental examinations at the first attempt whereas respondent No.3 had passed the higher standard departmental examination at the second attempt.

5. In view of the above, it appears to the Court that it would be in the fitness of things, if the Registrar of this Court examines the matter afresh for the purpose of taking a fresh decision regarding appointment to the post of Clerk of the Court (Registrar) from Bhavnagar District. Since no order of appointment is issued so far, the question of quashing the appointment order does not arise.

6. The petition is accordingly allowed and the Registrar of the High Court of Gujarat is directed to reconsider the matter after considering all the relevant materials for the purpose of making appointment to the post of Clerk of the Court (Registrar) from Bhavnagar District.

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

sundar/-